

NO. 45075-5-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

STATE OF WASHINGTON,

Respondent,

v.

MIGUEL GARCIA,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR LEWIS COUNTY

The Honorable Michael H. Evans, Judge

BRIEF OF APPELLANT

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A. ASSIGNMENT OF ERROR

The State presented insufficient evidence to prove the offense as charged.

Issue pertaining to assignments of error

The jury was instructed that to convict appellant of possession of methamphetamine with intent to deliver, it had to find he knowingly possessed methamphetamine. Where the evidence was insufficient to establish this knowledge, must appellant's conviction be reversed and the charge dismissed?

B. STATEMENT OF THE CASE

1. Procedural History

On March 4, 2013, the Cowlitz County Prosecuting Attorney charged appellant Miguel Garcia with one count of possession with intent to deliver methamphetamine. CP 1-2; RCW 69.50.401(1). The information alleged that the offense occurred within 1000 feet of a school bus route stop and also sought an exceptional sentence, alleging that the offense was a major violation of the Uniform Controlled Substances Act. RCW 69.50.435(1)(c); RCW 9.94A.535(3)(e).

The case proceeded to jury trial before the honorable Michael Evans, and the jury returned a guilty verdict. CP 50. The jury answered

the special verdicts in the affirmative. CP 51-53. The court imposed an exceptional sentence of 70 months, including a 24-month school zone enhancement. CP 60, 67. Garcia filed this timely appeal. CP 71-72.

2. Substantive Facts

On February 27, 2013, members of several law enforcement agencies were working on a fugitive apprehension team in Cowlitz County. RP 18. Acting on information that the suspect they were looking for was at house in Longview, the team set up surveillance around the house. RP 21. Members of the team knocked on the front door, explained why they were there, and received permission to search the house. RP 23. They did not locate the suspect. RP 24.

While inside, Officer Fila Matua kept his eye on a shed in the backyard. He had seen people walking in and out of the shed earlier, and when he saw a woman exit the shed, he stepped outside to talk to her. RP 22, 24-25. Daphne Kraabell told Matua that there was one more man inside the shed, so Matua and Detective Kevin Sawyer approached the shed and asked him to come out. RP 25-26, 92.

Miguel Garcia exited the shed in a matter of seconds. RP 92, 183. He appeared calm, and he stopped for Matua to conduct a pat down search. RP 93, 186. Garcia was unarmed, and he was not the suspect the

team was searching for. RP 93. He did not appear nervous, and he made no effort to run away. RP 138.

Matua and Sawyer went into the shed to search for the suspect. RP 27. They did not find him, but they saw, on a shelf along the side of the shed, a one-pound package of methamphetamine. RP 27-28, 95. They also noticed a large amount of cash, some digital scales, packaging, and plastic bags. RP 28, 94. The officers left the shed immediately and placed Garcia and Kraabell under arrest. RP 28, 133.

Officer Raymond Hartley obtained a warrant to search the shed. RP 55. The search team located the methamphetamine, scales, currency, some baggies, bags of needles, containers with residue, and a small video monitor. RP 59, 79-80. The shed also contained numerous other items, such as a work bench, yard tools, duct tape, an air compressor, a hand-held camcorder, and a socket set. RP 75, 77-78, 80, 101.

Garcia was charged with possession of methamphetamine with intent to deliver, based on the evidence found in the shed. At trial, Matua testified that he found a large amount of a crystal substance wrapped in Saran Wrap in the shed, which looked like an eight-inch tube of something white. RP 39-40. It was not labeled, but he recognized it as methamphetamine, because he is trained in recognizing narcotics

paraphernalia. RP 40-41. Someone without his training might not recognize the same things as being narcotics related. RP 38.

Hartley is a detective with the Longview Police street crimes unit, whose primary focus is on drug enforcement. RP 53. He testified that he saw a large package wrapped in cellophane, as well as some measuring equipment, baggies, and needles. RP 59. Hartley is specifically trained to notice and identify narcotics, and to him the package looked like a pound of methamphetamine. RP 59, 66, 68. To the untrained eye, however, it simply looked like a tube of salami or something wrapped in cellophane. RP 60, 68.

Sawyer also testified that when he saw the cellophane package, he could tell it was methamphetamine. RP 95. He, too, is specifically trained to recognize drugs and has made arrests in over 300 drug cases. RP 135-36.

Detective Seth Libbey of the Longview Police street crimes unit also described his narcotics training. RP 189-90. He testified that he has been involved in narcotics investigations, and he knows what methamphetamine looks like when packaged in large quantities. RP 192, 194. Libbey testified that he saw a summer sausage-sized package wrapped in cellophane, which he recognized as a pound of methamphetamine. RP 204.

C. ARGUMENT

THE EVIDENCE WAS INSUFFICIENT TO PROVE THAT GARCIA KNEW THERE WAS METHAMPHETAMINE IN THE SHED, AND HIS CONVICTION MUST BE REVERSED.

For a criminal conviction to be upheld, the State must prove every element of the charged crime beyond a reasonable doubt. U.S. Const. amend. 14; Const. art. 1, § 3; In re Winship, 397 U.S. 358, 25 L. Ed. 2d 368, 90 S. Ct. 1068 (1970); State v. Crediford, 130 Wn.2d 747, 759, 927 P.2d 1129 (1996). “A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom.” State v. Walton, 64 Wn. App. 410, 415, 824 P.2d 533, review denied, 119 Wn.2d 1011 (1992). But, as a matter of state and federal constitutional law, a reviewing court must reverse a conviction and dismiss the prosecution for insufficient evidence where no rational trier of fact could find that all elements of the crime were proven beyond a reasonable doubt. State v. Hickman, 135 Wn.2d 97, 103, 954 P.2d 900 (1998); State v. Hardesty, 129 Wn.2d 303, 309, 915 P.2d 1080 (1996); State v. Chapin, 118 Wn.2d 681, 826 P.2d 194 (1992); State v. Green, 94 Wn. 2d 216, 616 P.2d 628 (1980).

The State charged Garcia with possession with intent to deliver methamphetamine, alleging that he possessed methamphetamine, knowing it to be a controlled substance. CP 1-2. At trial the State acknowledged

that, while the court is generally not required to instruct the jury on guilty knowledge as a separate element, it was an essential element in this case because of the charging language. RP 269; see State v. Sims, 119 Wn.2d 138, 142, 829 P.2d 1075 (1992). Thus, under the law of the case, to convict Garcia the jury had to find beyond a reasonable doubt that he (1) knowingly possessed methamphetamine (2) with intent to deliver methamphetamine (3) in the State of Washington. CP 44; RCW 69.50.401(1); Hickman, 135 Wn.2d at 102 (if unnecessary element is added to to-convict instruction, without objection, State assumes burden of proving added element).

Here, the State failed to prove that Garcia had knowledge that there was methamphetamine in the shed. The State presented evidence that the law enforcement officers who entered the shed found an unlabeled eight-inch tube of a white substance tightly wrapped in cellophane. RP 39-40. Each of these officers had received specific training in recognizing narcotics and paraphernalia. RP 38, 66, 68, 135-36, 190. Each of these officers had significant experience in narcotics investigations and arrests. RP 41, 47, 68, 135-36, 192, 194. It was based on this training and experience that they were able to recognize the cellophane-wrapped tube as a pound of methamphetamine. RP 41, 47, 68, 135-36, 204. The officers testified, however, that to someone without their training and

experience, the methamphetamine would just look like a tube of salami or something wrapped in cellophane. RP 60, 68, 204.

There was no evidence that Garcia had any training or experience with narcotics and no basis to conclude that he would recognize the cellophane-wrapped tube as methamphetamine. No one saw him enter the shed with the substance, and there was no evidence that he had touched or handled it. Moreover, Garcia did not panic or try to run when he saw the police but calmly left the shed and submitted to a pat down search when asked. Because the State did not produce sufficient evidence that Garcia was knowingly in possession of the methamphetamine discovered by trained law enforcement officers, his conviction must be reversed and the charge dismissed.

D. CONCLUSION

Garcia's conviction must be reversed and the charge dismissed for insufficient evidence.

DATED November 21, 2013.

Respectfully submitted,



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Certification of Service by Mail

Today I mailed a copy of the Brief of Appellant in *State v. Miguel*

Garcia, Cause No. 45075-5-II as follows:

Miguel Garcia DOC# 367058
Stafford Creek Corrections Center
191 Constantine Way
Aberdeen, WA 98520

I certify under penalty of perjury of the laws of the State of Washington
that the foregoing is true and correct.



Catherine E. Glinski
Done in Port Orchard, WA
November 21, 2013

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